## CHAPTER IV

## LEASES

In this Chapter we propose to examine how far the objectives of complete elimination of the tenant-landlord relationship can be achieved immediately. This objective requires that all existing tenants should disappear either by themselves becoming owners or by giving up the lands in favour of owners. There should be no leases in future.. But the balance of advantage would lie, for the present, in allowing leases under certain exceptional circumstances. There are lands owned by persons suffering from a disability such as a minor, a widow or unmarried woman, or a person suffering from a physical or mental disability. In these cases it would not be fair to insist on the owners taking up personal cultivation within a stipulated time on the penalty of losing their lands. It would not be in the interests of national defence to insist that persons serving in the defence forces should take up personal cultivation. Leases have to be permitted in these cases in future also with adequate safeguards regarding security of tenure and fair rent.

2. We have given anxious consideration to the question whether landholders of any other category may be permitted to lease out their lands. The Hyderabad Tenancy and Agricultural Lands Act, 1950, while prohibiting future leases in general, allowed as a special case leases by landholders holding less than three family holdings. Future leases are prohibited in Uttara Pradesh and Delhi. Though there was no such prohibition in PEPSU, the landlord could not resume the land once it was leased.

3. It is generally agreed that too large a proportion of our population is now dependent on agriculture and that it is necessary to relieve the pressure on land by stimulating migration from rural to urban areas. This specially true of the small holders with less than a family holding, as the income from land cannot give them any satisfactory standard of living. These persons may not think of migration at all if they are to be compelled to part with their land before leaving the village. If leases are permitted in such cases there will be less hesitance on the part of the small holder to try his hand at avocations other than agriculture. Hence we recommend that small holders owning not more than a family holding may also be allowed to lease out their lands.

4. To prevent abuse of this concession we would recommend that only small holders (owning not more than a family holding) whose total income from all sources including the rent of the land in question does not exceed Rs. 1,200/- should have the benefit of this exemption.

5. (A) Future leases.

All leases to be made in future should be in writing and a copy should be filed with the prescribed authority unless registered under the Indian Registration Act. The leases should run indefinitely and be terminable only if the owner requires the land for personal cultivation and the usual conditions for the resumption of land for personal cultivation are fulfilled. In order to ensure that a tenant taking these lands on lease has a sense of security for a minimum period, no such lease should be terminable before the expiry of five years on the application of the landlord. The land would be resumable even

after this period of five years only through the tenancy courts, after notice of two years terminating with the year of tenancy. In the case of lands owned by minors, widows and unmarried women and persons under physical or mental disability the right of resumption should lapse if it is not exercised within a period of five years from the date the disability ceases. A person serving in the defence forces may be allowed to resume land for personal cultivation within five years from the date of his retirement or discharge and not later.

6. (B) Existing Leases

The next question will be the treatment of existing leases so as to achieve the main objective of securing maximum personal cultivation. It would not be correct to declare all tenants holding land on a specified date as owners. Some of the lessors may belong to the categories of owners who could lease out lands even in future. Also some of the tenants may be in possession of large extents either as owners or as tenants or as both and the limits to holdings would have to apply in such cases. Further, it may not be equitable to deprive the owners who leased out their lands when there was no restriction on leases, of an opportunity to take up personal cultivation within a reasonable time. All these considerations weigh with us in recommending a limited right of resumption to the owner, the lease continuing in respect of the resumable area as long as the right of resumption subsists.

7. (C) Resumption for personal cultivation:-

The laws in force in Bombay, Hyderabad and Madras areas have imposed restrictions on the landlord's right of resumption for personal cultivation. Under the Mysore Tenancy Act, 1952, restrictions are placed on the right of resumption only when a tenant was holding land for more than 12 years. In other cases the tenancy is terminable on expiry of the stipulated period. According to Bombay Tenancy and Agricultural Lands Act of 1948 as amended up to 1956, a landlord can resume for personal cultivation so much land as will make the area in his possession reach the ceiling limit, provided that his income from the land to be so resumed would be his main source of income for his maintenance and that the land was shown in his name on 1.1.1952. In any case half the area leased to the tenant must remain with him after the resumption. Section 44 of the Hyderabad Tenancy and Agricultural Lands Act similarly provides that a landholder who is not already cultivating personally an area equal to three family holdings can resume for personal cultivation so much land from a protected tenant as would make the total land personally cultivated by him equal to 3 family holdings. But the resumption will be subject to the condition that after such resumption at least a basic holding will remain with the protected tenant; in case however the landholder does not himself own more than a basic holding he may resume the entire area leased and ~~where~~ after resumption a protected tenant is left with less than a basic holding the landholder can resume only up to half the area leased. According to Section 4A of the Madras Cultivating Tenants Protection Act, 1955 as inserted by the Amending Act of 1956, a landlord can resume for personal cultivation land up to 1/2 of the leased area; but he cannot so resume a greater area than would along with the area already in his possession as owner or tenant or both make up 5 acres of wet land. Resumption is not allowed (a) if the landlord on the date when the Amending Act came into force owned more than 13½ acres of wet land, or (b) if he had been assessed to any sales tax, profession tax or income tax during 1954-55 or 1955-56.

8. The landlord's right to terminate the tenancy on the ground that the land is required for personal cultivation is subject to varying degrees of restrictions in other States also.

In Uttar Pradesh and Delhi all tenants and sub-tenants have been given permanent rights.

In Uttar Pradesh the tenants have been brought into direct relationship with the State without any payment and they have become State tenants.

In Delhi the law provides for conferment of ownership on all tenants who will be required to pay compensation.

In the Punjab, Rajasthan and Himachal Pradesh security of tenure has been conferred on tenants, subject to the landlord's right to resume land personal cultivation. Tenants will however retain a minimum holding or a portion of their holding as follows

Punjab and PEPSU: Tenants retain upto 5 standard acres from which they can be ejected only if alternative land is provided by the State Government.

Rajasthan: Tenants will generally retain a minimum holding with a net income of Rs.1200/-.

Himachal Pradesh: Tenants retain 3/4 of the area.

Subject to this condition of a minimum holding or a portion of the land held on lease being left with the tenant, the landlor right to resume land for personal cultivation is limited to the following extent in

Bombay: Three economic holding (between 12 and 48 acres) No resumption is permitted from permanent tenants.

Punjab: 30 standard acres

PEPSU: 30 standard acres - Permanent tenants cannot, however, be evicted from an area of 15 standard acres.

Rajasthan: 30 to 90 acres (including lands already under personal cultivation) in cases where the landlord had under personal cultivation continuously for five years prior to 1948-49; in other cases the entire area in excess of the minimum holding which is to be retained by the tenant.

In the following States the limit has been fixed on the land which a landlord may resume for personal cultivation, there being no provision for a minimum holding being left with the ~~xxx~~ tenant.

Assam: In case of Adhiars - 2/3 of the area owned subject to a minimum of 10 acres and maximum of 33⅓ acres. In other cases - 2/3 of the area owned subject to a minimum of 8⅓ acres and maximum of 33⅓ acres.

Orissa: 7 to 14 acres.

Jammu and Kashmir: All tenants who have held land in 1955 have been given protected rights. Landlords have a right to resume from protected tenants areas varying from 2 to 6 acres provided however that where the holding of a landlord exceeds 4 acres of abi or 6 acres of khushki in Kashmir and 6 acres of abi or 8 acres of khushki in Jammu, the protected tenant will have to be left with a minimum area of 2 to 6 acres.

No person who is already personally cultivating land in excess of the ceiling for personal cultivation should be allowed to resume land from his tenants. A person whose holding exceeds the ceiling may be allowed to resume upto one-half of the land leased out to a tenant, subject to the condition that the tenant is left with not less than a basic holding.

The resumption in all cases however should be so regulated that the land resumed from all the tenants holding under the landlord in question together with the extent if any under his personal cultivation does not exceed the ceiling. The right of resumption should further be qualified as in the Bombay Act by the condition that the income from the land to be resumed should be the main source of the landlord's income for his maintenance.

10. It is desirable that the area which the landowner wants to resume should be demarcated as speedily as possible. Such demarcation would enable the tenant to know the land from which he cannot be evicted and he will have an incentive to improve it. Landlords should be required to file, within one year from the date of notification of the extent of the 'family holding' in the local area concerned, statements of reservation demarcating the lands reserved for resumption. The authorities empowered to issue certificates of reservation should ensure that the land left with the tenants would not be inferior in soil, value and irrigation facilities and the tenants should also be heard before the demarcation is finally allowed. If more tenancies than one are held under the same landlord, the landlord should demarcate the land for resumption so as to terminate only the tenancy or tenancies which are the shortest in point of duration.

It is also desirable to prescribe that the applications for resumption and for being put in possession should be filed within a period of three years from the date of issue of notification of the extent of the family holding for the local area concerned. This time limit need not apply to small holders (persons owning less than a family holding). Over the resumable area the tenant should have a heritable but not permanent or transferable right. He must also have the right to make improvements.

PERSONAL CULTIVATION

12. As the right of resumption can be exercised only when the land is required for personal cultivation, it becomes necessary to define precisely the term personal cultivation. The definition in the Bombay Tenancy and Agricultural Lands Act, 1948 reads as follows:-

"to cultivate personally" means to cultivate land on one's own account -

(i) by one's own labour, or
(ii) by the labour of any member of one's family, or
(iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share,

being land the entire area of which -

(a) is situate within the limits of a single village, or
(b) is so situated that no piece of land is separated from another by a distance of more than five miles, or
(c) forms one compact block:

Provided that the restrictions contained in clauses (a), (b) and (c) shall not apply to any land

In other States where tenancies are regulated, the security of tenure conferred on tenants is as follows:

Andhra: Tenants have been provided with security of tenure for six years.

Bihar: Sub-tenants holding land on oral leases have security of tenure. Others holding on written leases get occupancy rights if the land is held continuously for 12 years.

Madhya Pradesh: Occupancy rights accrue in habitually let out lands, that is, lands let for three years in a consecutive period of five years.

West Bengal: The under raiyat has been brought into direct contact with the State. The law for bargardars is that the landlord may resume 2/3 of the area. If he owned less than 7½ acres he may resume the entire area. Other forms of tenancies are not permitted.

Kerala: In Cochin area tenants have permanency of tenure. Eviction of all tenants, including cropsharers, has been temporarily stayed.

Manipur: Ejectment has been temporarily stayed.

9. The Second Five Year Plan recommends the principle that the owner's right of resumption should be regulated by the circumstances not only of the owner himself but also the tenant. The basic idea underlying the recommendations of the Plan on the right of resumption is that the tenant should be left with some land after resumption by the owner. The only exception is where the owner himself is in no better economic circumstances than the tenant, the extent owned bring less than a basic holding. We are in full agreement with the recommendations of the Plan and would therefore suggest as follows:-

(a) An owner who owns less than a basic holding may resume the entire area for personal cultivation.

(b) A person who holds land exceeding a basic holding but less than a family holding should be permitted to resume for personal cultivation one half of the area held by the tenant but in no event less than a basic holding.

In the case of owners, whose holdings fall between one family holding and the limit prescribed for personal cultivation, the main consideration is that a minimum area should always be left with the tenant. It is proposed that -

(i) Where the land owner has under his personal cultivation land which exceeds a family holding but is less than the ceiling limit, he may have the right to resume for personal cultivation, provided that -

(a) his tenant is left with a family holding, and

(b) the total area obtained by the owner together with the land already under his personal cultivation does not exceed the ceiling; and

(ii) If the land owner has less than a family holding or no land under his personal cultivation, he may be allowed to resume one-half the tenant's holding or an area which, together with the land if any under his personal cultivation, makes up a family holding, whichever is less, provided that the tenant is left with not less than a basic holding.

(i) which does not exceed twice the ceiling area,

(ii) up to twice the ceiling area, if such land exceeds twice the ceiling area.

Explanation I - A widow or a minor, or a person who is subject to physical or mental disbility, or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants.

Explanation II - In the case of a joint family, the land shall be deemed to have been cultivated personally, if it is cultivated by any member of such family".

The definitions in the Mysore and Hyderabad Act are substantially the same except that there is no condition regarding the location of lands. The Madras Act contains a simple definition that "a person is said to carry on personal cultivation on a land when he contributes his own physical labour or that of the members of his family in the cultivation of that land".

Definitions in the Madhya Bharat, Saurashtra, Ajmer and Vindhya Pradesh Acts are similar to that in the Hyderabad Act with minor variations of detail. In Rajasthan supervision through a manager or agent is allowed. In the Punjab, land would be regarded as personally cultivated even if payment is made as a share of the produce provided that the cultivation is carried on under the occupant's supervision. In PEPSU even the condition of supervision is not included.

13. The Second Plan enumerates the three principal elements of personal cultivation, viz., the risk of cultivation, personal supervision and labour. The Plan suggests that the expression "personal cultivation" should be so defined as to provide for the entire risk of cultivation being borne by the owner and personal supervision being exercised by the owner himself or by a member of his family. It is also pointed out that for the supervision being effective the owner or the supervising member of his family should reside, during the greater part of the agricultural season, in the village in which the land is situated or in a nearby village within a distance to be prescribed. Though the plan recognises that performance of minimum labour as an element of personal cultivation presents difficulties in practice, there is a suggestion that cultivation by personal labour may be provided for when resumption for personal cultivation is claimed. We are of opinion that there is no need to insist on personal labour so long as the entire risk of cultivation is borne by the owner and personal supervision is exercised by the owner or a member of his family residing during the greater part of the cultivation season in the village where the land is situated or in a nearby place. We agree that unless some limit of distance is prescribed for residence, the supervision cannot be really effective. We propose that the nearby place where the owner or the supervising member of his family resides should not be more than 10 miles distant from the land. Where, however, there is no inhabited village within this distance of 10 miles, the person cultivating the land may reside in the nearest inhabited village. For purposes of personal cultivation, the guardian of a minor or person suffering from mental or physical disability, should be deemed to be a member of the family.

## RENT

14. The need for regulation of rent arises from the accepted principle that 'the more a man gets from his own production, the more incentive he has'. Rackrenting was the principal evil sought to be remedied by the earlier tenancy legislation in the different parts of the country. The first attempt made in this direction in any part of this State was in 1940 in Dharwar district where

the Bombay Tenancy Act 1939 was brought into effect as an experimental measure. The Act was extended to the remaining three districts of Bijapur, Belgaum and North Kanara in 1946. The Hyderabad Asami Shikmis Act of 1945 gave power to the Government to fix the maximum rent. Regulation of rent was first introduced in the former Mysore State by the Mysore Tenancy Act of 1952. In South Kanara district and Kollegal taluk there was no statutory maximum for the rent up to 1-10-1956. Rents were not regulated in Coorg till the promulgation of the Coorg Tenants Ordinance in March 1957.

15. The maximum limits laid down by or under the enactments have also been undergoing reduction progressively. The quantum of rent in Bombay was reduced from 1/3 for unirrigated lands and 1/4 for irrigated lands to 1/6 for all lands in 1952. The rent has since been fixed between 2 and 5 times the assessment by the Amending Act of 1955, the tenant paying land revenue and other Government dues. The Hyderabad Act originally fixed the reasonable rent at 1/3 and 1/4 but the rent has since been reduced to 1/4 and 1/5 under the Amending Act of 1954. This Amending Act also fixes the maximum limit for rent as a multiple of the land revenue, the multiple varying from 3 to 5, Government dues being paid by the landowner. In former Mysore State the maximum rent was originally fixed at one-half of the produce and in 1955 it was reduced to 1/3 in the Maidan tracts and 1/4 in the Malnad tracts. The maximum fixed under the Madras Act varies from 33 1/3% to 40% of the normal gross produce. Maximum rent in Coorg has been fixed at 1/3 of the produce. The table given in Appendix VIII shows that elsewhere in India and the maximum rent fixed by statute varies from 1/2 to 1/6 the gross produce and in a few States it is a multiple of land revenue.

16. The First Five Year Plan stated that the essential principle in the fixation of rents would be that the rent should be so fixed that, having regard to his expenses of cultivation and other risks, a fair wage remains for the cultivator. The Plan also mentioned that while it was difficult to suggest a generally applicable maximum rate of rent, over the greater part of the country, a rate of rent exceeding 1/4 or 1/5 of the produce could well be regarded as requiring special justification. The second five year Plan proposes no modifivations to the above limits but suggests that it may be useful to fix the maximum rent as a multiple of land revenue.

17. In the course of our tours we noticed that except in the areas where tenancy law has been in force for some time, the customary rents are still prevailing. These customary rents are generally half the produce, though in a few cases a higher proportion of the produce goes to the landlord.

18. We are of opinion that in the prevailing circumstances of the State it would not be correct to fix the rent as a multiple of assessment. The current assessments were fixed in various areas over a period of more than 40 years from 1905 to 1945. The basic principles for fixing assessment varied in different areas. Crop patterns have also changed considerably since the last settlement. Further, over the greater part of the State the assessment was not fixed with reference to the value of the produce. A general revision of assessments, relating them to the gross produce of the land is now being undertaken. It would therefore be desirable to defer linking the rent with assessment till after the general revision.

19. We are not in favour of prohibiting rents in kind. Rents in kind have been in vogue since time immemorial. The system has its advantages as well as its defects. The defects

are, however, not insurmountable. The system should work satisfactorily if the landlord is required to receive the crop rent in the village where the land is situated and the passing of a receipt is ensured by strict enforcement of the penalties provided in the law. On the other hand, the system of crop rents has its own distinct advantages. It is hardly proper to bind the rural population to the cash economy of the cities. To pay rent in cash, the cultivator would have to transport and sell the produce at the nearest market. This would result in the flooding of the market immediately after the harvest and consequent reduction in prices. Moreover it would be obviously unfair to the tenant to fix the commutation at the current high level of prices. The Land owners still attach sentimental importance for consuming grain from their own lands. Leases will continue in future only in case of lands owned by persons under a disability or of lower economic statis. In these cases the tenant rather than the landlord will have the upper hand. Hence there will be least scope for abuse of the right of collecting rent in kind. We further recommend that the landlord should take delivery of the crop rent at the village where the land is situated. Where however the landlord wants cash payment or fails to receive the crop rent within three months of the harvest, the tenant shall pay the value of the produce-rent commuted according to the rates notified annually by the prescribed officer.

20. In cases where there is no agreement between the landlord and the tenant regarding the gross yield in any particular year, the tenant shall be deemed to have paid the rent if he deposits with the Tribunal the cash value of the produce rent payable in the basis of the average yield for that year for the class of land concerned in the local area at the commuted price notified by the prescribed authority.

21. As regards the quantum of rent, we are of opinion that the limits laid down in the First Five Year Plan are fair and may be adopted. The maximum rent may be 1/4 of the produce in case of lands having facilities for assured irrigation by flow and 1/5 of the produce in other cases, the assessment and other Government dues being paid by the landlord.

In respect of lands having assured flow irrigation, under river channels and major irrigation projects, the tenant runs no risk of losing his investment on seed and manure or his labour by failure of crops. The cost of cultivation is estimated at about one half the produce for irrigated lands. If the rent is fixed at 1/4 of the produce the landlord and the tenant will have an equal share in the net produce.

The same principle of the landlord and the tenant sharing the net produce equally would indicate that 1/5 of the gross produce would be reasonable rent for lands other than lands with assured irrigation. For an owner-cultivator, the expenses of cultivation including land revenue will generally absorb 2/3rd of the gross produce. The net produce will be 1/3 of the gross produce and if the landlord and the tenant share it equally, each will have to get 1/6. The land revenue payable on the land has already been deducted along with cultivation expenses, but as the land revenue is payable by the landlord his share has to be 1/6 the produce plus land revenue.

Even if the land revenue and other Government charges amount to only 1/30 of the gross produce, the landlord's share will be 1/5 of the gross produce. We therefore recommend that the fair rent in respect of all lands other than lands with assured irrigation may be fixed at 1/5 of the gross produce, the landlord paying the assessment and other Government dues.

22. We are aware that the limits of maximum rent proposed

by us are higher than 1/6th of the produce fixed in Bombay in 1952. This limit of 1/6 was fixed in Bombay when leases as a rule were allowed. The idea underlying this low limit was presumably to make it unremunerative for the absentee landlord to stick on to the land, thus making it easier for the land to pass on to the tenant. The view has been expressed that such a drastic reduction in rent made the purchase of lands by the tenant nor worthwhile. According to our proposals leases in future would be limited to lands held by disabled persons or small holders. The conomic condition of the latter would in most cases be no better than that of the average tenant and there is therefore no longer any justification to reduce the rent below the economic limit for the landlord. Both the Plans have considered that rent at 1/4 or 1/5 of the produce would be reasonable.

23. We would also like to make special mention of the fact that enforcement of even this limit would involve substantial reduction of the existing statutory limits all over the State except in the areas where the Hyderabad and Bombay Tenancy Acts are in force. When it is remembered that the current rentals are generally higher than the existing statutory limits, it will be appreciated that strict inforcement of even the limits suggested by us would afford great relief to tenants.

24. To enable the system of rents based on crop share working staisfactorily, we suggest that the "average yield" of each crop in each local area may be notified annually. For fixing the family holding the Land Commission will, according to our proposals in Chapter VI, determine the gross average yield for each class of land in each local area. It should not therefore be difficult for the Land Commission to determine simultaneously the standard yield (yield when the out-turn of crop is 16 annas) of each crop for the different classes of land. Lands are divided into three classes namely (i) jirayat or khushki or dry, (ii) tari or rice and (iii) bagayat or garden. To allow for local variations in the class of soil, lands in each class may be further subdivided into three grades, namely (i) superior or I grade, (ii) medium or II grade and (iii) inferior or III grade, based on the soil value assigned during settlement. The Land Commission will have to work out the standard yields for the principal crops for each class and grade of land in each local area.

This standard yield will be reduced each year on the basis of the anna-wari yield of the crop in question to determine the average yield for that year. The rent to be paid by each tenant would be 1/4 or 1/5 as the case may be of the average yield.

In this way the rent to be paid for each grade of land and crop each year will be fixed generally for the local area. There should not be any scope for the determination of fair rent in individual cases; otherwise there will be a plethora of litigation. The average yield notified for each local area should apply to all lands of the specified grade and class in that area.

As the crop-cutting experiments will be the basis for determining the anna-wari, it is desirable that strict instructions should issue to the authority conducting them to secure the presence of at least one representative each from the tenants and from the landlords during such experiments.

(25) In Malnad areas most of the lands classed as dry are normally used only for grazing or for removing leaves. The rent on such lands cannot be fixed on the basis of the produce. We would suggest that in such cases the rent may be five times the assessment.

(26) Till the fixation of the standard yields by the Land Commission as proposed above, rents should be paid on the basis of estimates of the gross produce arrived at in previous proceedings, if any, in tenancy cases, the new proportion of the rent to the pro-

P/ duce being nevertheless adopted.